

# INDUSTRY CIRCULAR

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE  
ALCOHOL AND TOBACCO TAX DIVISION



*JMM*

WASHINGTON, D. C. 20224

Industry Circular No. 68-4

January 29, 1968

## NOTICE OF PROPOSED RULE MAKING 27 CFR Part 5

Proprietors of Distilled Spirits Plants,  
Importers and Wholesalers of Distilled  
Spirits, and others concerned:

Industry Circular No. 67-3, dated April 21, 1967, advised you of a series of three public hearings to be held to consider amendments in the regulations covering the labeling and advertising of distilled spirits.

The first hearing concerning industry petitions for regulatory changes in the labeling of neutral spirits and domestic whiskies, particularly as affected by cooperage, was concluded last September 22. This circular is issued to provide you with a reprint of the proposed rule making for the second hearing, to begin on April 1, 1968, which was published in the Federal Register for January 26, 1968.

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(27 CFR Part 5)

## LABELING AND ADVERTISING OF DISTILLED SPIRITS

### NOTICE OF HEARING FOR MISCELLANEOUS CHANGES IN REGULATIONS

Notice is hereby given, pursuant to the provisions of section 5 of the Federal Alcohol Administration Act (49 Stat. 981 as amended; 27 U.S.C. 205), of a public hearing to begin at 9:30 A. M. (EST)

On Monday, April 1, 1968, in Room 3313, Internal  
Revenue Service Building, 1111 Constitution Avenue,  
N.W., Washington, D. C.

at which time and place all interested parties will be afforded opportunity to be heard, in person or by authorized representative, concerning regulatory changes in 27 CFR Part 5. In the interest of orderly procedure the subjects will be heard separately and in the numerical order set forth below:

1. Natural flavor components. The introduction of new processes and techniques and the use of improved distilling equipment in the production of distilled spirits have caused questions to be raised as to the reliability of distillation proofs as an infallible guide for distinguishing between distilled spirits products. For these reasons and in order to insure that a product will possess the taste, aroma, and characteristics generally attributed to

products of that class and type, it is proposed that an additional factor, based on the number of "natural flavor components" in the product, be established for use, under certain circumstances, as a complement to proof of distillation. Natural flavor components would be defined as meaning those volatile materials in the product consisting of esters, acids, and higher alcohols. The new criterion would be applicable (except in the case of vodka) at the time of the production gauge. The natural flavor component criteria proposed for the respective distillation proof limitations follow:

<u>Product</u>	<u>Proof of Distillation</u>	<u>Natural Flavor Components</u>
A. Neutral spirits or alcohol	At or above 190 <sup>o</sup> proof	Less than 8 grams per 100 liters at 100 <sup>o</sup> proof
B. Vodka	At or above 190 <sup>o</sup> proof	Less than 4 grams per 100 liters at 100 <sup>o</sup> proof when bottled
C. Whisky (generic)	Less than 190 <sup>o</sup> proof	Not less than 8 grams per 100 liters at 100 <sup>o</sup> proof
D. Light Whisky	At more than 160 <sup>o</sup> and less than 190 <sup>o</sup> proof	Not less than 8 grams and not more than 124 grams per 100 liters at 100 <sup>o</sup> proof
E. Whisky (American type)	Not exceeding 160 <sup>o</sup> proof	Not less than 125 grams per 100 liters at 100 <sup>o</sup> proof
F.. Brandy (generic)	Less than 190 <sup>o</sup> proof	Not less than 8 grams per 100 liters at 100 <sup>o</sup> proof
G. Neutral brandy	More than 170 <sup>o</sup> proof	Less than 40 grams per 100 liters at 100 <sup>o</sup> proof
H. Rum	Less than 190 <sup>o</sup> proof	Not less than 8 grams per 100 liters at 100 <sup>o</sup> proof

NOTE - It is intended that this natural flavor component criterion would be used to verify product classification when (a) unusual or atypical distilling methods or procedures are employed, or (b) the proof of distillation approaches the regulatory maximums or minimums so closely that a more precise determination is required to insure that the distillate will have the characteristics generally attributed to that class and type.

2. Vodka. Vodka is a neutral spirits product without distinctive character, aroma, or taste. Present regulations prescribe several specific methods for the production of such product but grant the Director, Alcohol and Tobacco Tax Division, authority to approve other methods of production which will result in a product equally without distinctive character, aroma, or taste. In order to relieve producers from unnecessary steps in production and from obtaining approval thereof, as required, it is proposed to redefine vodka so as to include any product regardless of production method which is without distinctive character and which contains less than four grams of natural flavor components. The proposal would not change the consumer concept of the product. A new definition for vodka is proposed to read substantially as follows:

"Vodka' is neutral spirits, so distilled or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color and containing, when bottled, less than four grams of natural flavor components consisting of esters, acids, and higher alcohols per 100 liters at 100° proof, and bottled at not less than 80° proof."

3. Gin. The present regulatory distinction between "distilled gin" and "compound gin" was drawn shortly after repeal to differentiate the distilled product from that made by mixing flavors and essences with alcohol, which then was considered to be of inferior quality. Since then, there have been improvements in the art of compounding which result in the production of gin of comparable quality. In order to avoid stigmatizing such products with the unfavorable word "compound", a single standard is proposed for "gin" whether produced by distillation or compounding. Gins could of course bear the designations "distilled" or "compound", where applicable, if the bottler so desires. A new definition for gin is proposed to read substantially as follows:

"Gin' is a product obtained by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials. It shall derive its main characteristic flavor from juniper berries and be reduced at time of bottling to not less than 80° proof. Gin produced by original distillation or by redistillation may be further designated as 'distilled'."

4. Blended apple brandy. Laird and Company, Eatontown, New Jersey has petitioned that the class "brandy" be revised to add a new type designation for "blended apple brandy" or "blended applejack" in order to offer the consumer a lighter apple brandy product. The new type designation proposed by Laird and Company reads substantially as follows:

"Blended apple brandy (applejack)', or 'apple brandy (applejack), a blend', is a mixture which contains at least 20 percent by volume of 100° proof apple brandy (applejack) and not more than 80 percent of neutral spirits if such mixture at the time of bottling is not less than 80° proof."

The neutral spirits component could be derived from any commodity, including grain. The label would be required to show the percentage of neutral spirits and the name of the commodity from which distilled.

5. Rum. "New England rum" is presently defined as any rum distilled in the United States at less than 160° proof. The featuring of this area designation with the class designation may likely mislead the consumer into believing that the rum was in fact produced in New England. In view of the possibility of consumer deception, it is proposed to grant the request of Felton & Son, Inc., the only producer of New England rum, that the deletion of this standard be considered.

6. Flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky. Consumer demand for flavored distilled spirits products, especially flavored brandy and flavored gin, has increased to such a degree as to make it advisable to standardize these products in order to maintain product identity and quality. The proposed regulatory definition would in general follow, with some additional restrictions if wine is used, the administrative rules now observed in considering labels for these products. It would read substantially as follows:

"'Flavored Brandy', 'flavored gin', 'flavored rum', 'flavored vodka', and 'flavored whisky' are brandy, gin, rum, vodka, and whisky, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 70° proof. If the finished product contains more than 2 1/2 percent by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain not in excess of 15 percent by volume of wine, without a label statement, if such wine is produced from the same kind of fruit."

7. Definition of distilled spirits. In recent years a number of products have been made containing as little as 5 percent distilled spirits and as much as 95 percent wine to which have been added some flavoring ingredients. These specialties have been bottled at 48° proof or less but under the present regulatory definition are classified as distilled spirits and are packaged, labeled, and strip stamped as distilled spirits notwithstanding the fact that they are essentially wine products. It is proposed to amend the definition of "distilled spirits" so as to exclude a mixture of wine and distilled spirits, bottled at 48° proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis. Specialties containing more than 50 percent wine could, of course, continue to be marketed if properly labeled and sold as wine products.

8. Mandatory information, net contents, proof statements, qualifying words, and alcoholic ingredients. In order to lessen the possibility of consumer deception by making it easier for him to locate and to better understand key items of information describing the contents of containers, it is proposed:

A. To require that all mandatory information be printed on labels in such a manner as to be generally parallel to the base on which the container rests as it is designed to be displayed (a similar provision is found in the Model State Regulation Pertaining to Packages adopted by the National Conference on Weights and Measures);

B. To require the alcoholic content (proof) to appear on the brand label of the product;

C. To prohibit net contents statements from being qualified by any descriptive term such as, "jumbo," "full," "giant";

D. To require the net contents to appear on the brand label except in the case of distilled spirits packaged in containers conforming to the standards of fill; and

E. To require that any statement, other than required information, on a label as to any of the alcoholic components of the product include the name and percentage of all the alcoholic components, except alcoholic coloring, flavoring, or blending ingredients used in minute quantities.

As used above "brand label" means the label carrying, in the usual distinctive design, the brand name of the distilled spirits, and any other label appearing on the same side of the bottle as such brand label.

9. Treatment of distilled spirits. Under current regulations, the addition of any coloring, flavoring, or blending materials to any class or type of distilled spirits, except as otherwise specifically provided, alters the class and type thereof. The removal of constituents from distilled spirits can also alter the class and type thereof. In recent years proprietors have repeatedly requested authority to treat whisky prior to bottling with large quantities of carbon and/or charcoal, or by leaching and other processes. It is proposed to amend the regulations to add a counterpart to

the present limitations on the addition of materials which would cover the extraction of materials. The proposed addition to the regulations would read substantially as follows:

"The removal from any distilled spirits of any constituents to such an extent that the product does not possess the taste, aroma and characteristics generally attributed to that class or type of distilled spirits alters the class or type thereof and the product shall be redesignated accordingly. In addition, in the case of straight whisky the removal of any substance whatsoever, except such as results from authorized stabilization of the product within the limitation prescribed under Section 5025(j), Internal Revenue Code, shall be deemed to alter the class or type thereof, and in the case of any other whisky the reduction of the natural flavor components below the minimum prescribed in the standard of identity for that class or type shall be deemed to alter the class or type."

10. Labeling of bulk imports. Importations of bulk spirits are increasing and they are often bottled by a person other than the person responsible for the importation. Under present regulations, when bottled by such a person, the label must show the name and address of the person responsible for the importation, and in addition either (a) the name of the bottler and the place where bottled, or (b) that the distilled spirits were bottled in the United States for the person responsible for the importation, e.g. "imported by and bottled in the United States for \_\_\_\_\_." Compliance with the requirement for showing the name and address of the person responsible for the importation has proved unnecessarily burdensome in many instances, particularly where the identity of such person has become meaningless as a result of numerous transfers of the goods. The statute requires that the identity of the manufacturer, bottler, or importer be disclosed. In recognition of the fact that the bottler is, under normal circumstances, responsible for the product he bottles, the regulations do not require that the name of the manufacturer of domestic distilled spirits be stated if the name of the domestic bottler appears. Equal treatment requires that a similar option be available in the case of domestically bottled imported goods. It is accordingly proposed to amend the regulations to make optional the showing of the name and address of the person responsible for the importation when the name of the bottler and the place where bottled are shown.

11. Age certificates. Imported whiskies less than four years old and brandies less than two years old must bear an age statement on the label; age statements are optional for all other imported whiskies and brandies. Under current regulations, age certificates, issued by a duly authorized official of the appropriate foreign government, are required only where the labeling of the product bears a statement of age. Although in most cases age certificates are voluntarily furnished, an age certificate should be required to establish that the product is in fact sufficiently matured so that the age statement may be omitted. It is proposed to amend the regulations to require age certificates for all imported whiskies and brandies.

12. References to supervision. Present regulations prohibit labels from stating or indicating that the distilled spirits were distilled, blended, made, bottled, or sold under, or in accordance with any governmental authorization, law, or regulations, unless such statement is required or specifically authorized by such government. Since several foreign countries, notably Canada and the United Kingdom, have specifically authorized distilled spirits exported to this country to bear certain statements of this nature, The Bourbon Institute, New York, New York, and Schenley Industries, Inc., New York, New York, have requested that the regulations

be amended so as to permit the label on domestic spirits to bear truthful statements that the spirits were distilled, barreled, warehoused, blended, proofed, or bottled, as the case may be, under supervision of the United States Government.

Necessarily involved in the consideration of this proposal are the questions (1) as to whether any such statement should be authorized to appear on imported products if its appearance is not permitted when sold for consumption in the country of origin, and (2) as to whether statements of this character should not be barred on the labels of imported spirits if the present regulations are not amended so as to authorize the use of similar statements on domestic spirits.

Also appropriate for consideration in connection with this proposal is the question as to whether foreign products should be permitted to bear the words "bond", "bonded", "bottled in bond", or like phrases, if modified by the name of the country of origin, on any label when the laws of the country in which the spirits are produced authorize the bottling of spirits in bond and require or authorize the spirits to be so labeled. Under present regulations foreign products in order to be so labeled must also meet all the requirements of United States law providing for the bottling of domestic distilled spirits in bond. Such references on labels would of course include references on official stamps.

#### REQUESTS TO PRESENT ORAL TESTIMONY

All persons who desire to present oral testimony should so advise the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D. C. 20224, not later than Friday, March 22, 1968. Requests shall be submitted in an original and three copies and must include (1) the name and address of the party submitting the request, (2) the name and address of the person or persons who will present oral testimony, (3) identification of the subject or subjects to which the testimony will be directed, and (4) the approximate length of time desired for the presentation of testimony on each subject.

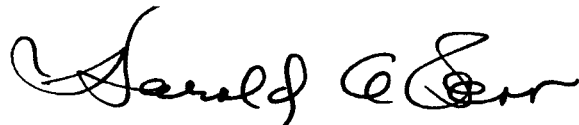
#### SUBMISSION OF WRITTEN MATERIAL

Any interested party may submit to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D. C. 20224, in an original and nine copies, relevant and material written data, views or arguments for incorporation into the record of hearing. The subject to which the comments are directed must be specifically identified. Written material must be received not later than Wednesday, March 27, 1968.

At the conclusion of the hearing a reasonable time will be afforded interested parties for examination of the record and submission of written arguments and briefs.

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Inquiries concerning this circular should refer to its number and be addressed to the Director, Alcohol and Tobacco Tax Division, (Attention CP:AT:JHL), Washington, D. C. 20224.



Harold A. Serr  
Director, Alcohol and Tobacco Tax Division